

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1750 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESHUBHAI ODHABHAI KATHI

Versus

STATE OF GUJARAT

Appearance:

MR AS DAVE for MR BK PARIKH for Petitioner

MR UR BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/06/96

ORAL JUDGEMENT

The petitioner Keshubhai Odhabhai Kathi has challenged the order of detention dated 27.12.1995 passed by the District Magistrate, Amreli (hereinafter referred to "the detaining authority") under section 3(1) of the Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") in this petition under Article 226 of the Constitution of India.

In the grounds supplied to the detenu, the detaining authority has placed reliance on two cases registered against the detenu being CR No. 79/90 and 51/95 before the Nageshri Police Station. The first criminal case was under section 393, 342 and 34 of IPC, wherein the detenu was acquitted by the criminal court, however, the second criminal case for the alleged offence under section 452, 323, 504 of IPC is pending for trial. Over and above these two cases, a reliance was also placed by the detaining authority on the statements of 20 witnesses, whose identity is not disclosed claiming privilege under section 9(2) of the Act, wherein they have disclosed the illegal and nefarious activities of the detenu of beating innocent persons, extorting money with the point of deadly weapons etc. Relying on these materials, the detaining authority has recorded a finding that the detenu is a dangerous persons within the meaning of section 2(c) of the Act and, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu, and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is capable of being disposed of on the first contention advanced by Mr. AS Dave, it is not necessary to refer to and consider the other contentions raised in the petition. Mr Dave learned advocate appearing for the petitioner has assailed the genuineness of the claim of privilege made by the detaining authority under sec. 9(2) of the Act viz a viz the statements of the witnesses. In the submission of Mr. Dave that as the detaining authority itself was required to be subjectively satisfied that the claim of privilege which it was seeking to make was justified. Therefore, it has directed the PSI Nageshri to satisfy as to whether the fear or apprehension expressed by the witnesses was genuine or not and the PSI, Nageshri was in his turn required to call such witnesses and verify and to record as to whether apprehension or fear expressed by these witnesses in their statements was genuine or not. The PSI, Nageshri has written one word namely "verified". Relying on such an endorsement made by the PSI, the detaining authority has claimed privilege. In an identical case, in the case of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana and Others, reported in 1996(1) GLH , 300, this Court (Coram: S.D. Shah, J.) has held that such an exercise on the part of the authority is merely an eye wash and there is no genuine independent material before the detaining authority to claim the privilege, and under the circumstances, the

detenu was denied an opportunity of making effective representation by making and supplying to him the other details of the statements of witnesses. In view of the said judgment of this Court , the present petition which is identical and, therefore, I have to hold that the continuous detention is null and void.

In the result, this petition is allowed. The impugned order of detention dated 27.12.1995 is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute with no order as to costs.
